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LLOYD BARBER¹

May it please the court to listen to a few words from me in appreciation of our departed jurist, the Honorable Lloyd Barber.

I saw him for the first time in June, 1858, at Rochester, Minnesota, where he had just opened a law office. He was then about thirty years of age, a man in vigorous health and in high expectation of a useful and distinguished professional career. The country round about the town of Rochester was then being settled and preëmpted. Its limpid streams, its fertile soil, and its healthful skies beckoned the industrious to its borders, there to acquire competence and content. A number

¹ Memorial address delivered June 1, 1915, in the district court at Winona, Minnesota.

Lloyd Barber was born in Bath, Steuben County, New York, January 11, 1826. He visited Minnesota for the first time in 1852, spending some time in St. Paul; but as a favorable business opportunity did not present itself, he returned to New York, where he remained for the succeeding six years, devoting himself to the study of law. He was admitted to the bar in 1857. The following year found him again in the West, and he at length began the practice of his profession in Rochester, Minnesota. In 1862 he was elected county attorney of Olmsted County. In 1874 he removed to Winona and opened a law office which he maintained for nearly thirty-four years. In his earlier years Judge Barber was one of the most prominent men of the bar in the Northwest, and his decisions as judge were widely quoted. He was one of the incorporators of the Winona Bar Association, January 2, 1889, being named as vice-president. From the time of his coming to Minnesota Judge Barber was actively interested in agriculture. On his removal to Winona, he disposed of his two farms near Rochester, and in 1880 purchased a large tract of fourteen hundred acres in Richmond township, Winona County, which he eventually developed into a stock farm. Mr. Barber was married in 1862 to Mary J. De Bow of Almond, New York, who died in January, 1867. In the following year (February, 1868) he married Lucy Storrs of Long Meadow, Massachusetts. His death occurred at Winona, May 8, 1915. Franklyn Curtiss-Wedge, *History of Winona County*, 1: 273, 288 (Chicago, 1913); *Winona Independent*, May 9, 1915.—Ed.

of lawyers, among others Stiles P. Jones, Colonel James George, Judge Elza A. McMahon, and John W. Remine, had already preceded him. They were all trained in the old common law practice and held in contempt the new code in which law and equity were merged, but Judge Barber had studied and practiced the Field code in New York where it originated and whence it came through Wisconsin into Minnesota upon the organization of the latter as a territory. His familiarity with this new practice gave him a decided advantage over old practitioners. He was also a man who spent all his spare time in study and, as a result, he was able to speak with precision and authority upon doubtful questions. Courts listened to him with marked attention, and his clients were inspired with confidence. He became the leader of the Olmsted County bar, and his name was honored at the bank.

On July 6, 1864, Thomas Wilson of Winona, first judge of the third judicial district, was appointed by Governor Stephen Miller as a justice of the supreme court. A Republican judicial convention for the third district was then called by D. Sinclair, chairman, for September 7, 1864, at Winona, to nominate a candidate for judge at the approaching November election. Delegates were apportioned as follows: to Winona and Olmsted counties eight each, to Wabasha and Houston five each, and to Fillmore nine. The convention met and nominated Judge Barber; thereupon Governor Miller appointed him on September 12 to serve out the unexpired three and a half months of Judge Wilson's term. There was much talk at the time of giving the nomination to Chauncey N. Waterman of Winona, inasmuch as he was considered equally well qualified and as Winona could be more conveniently reached by the lawyers of the district. But Winona already had Daniel S. Norton as a candidate for United States senator, William Windom as representative in Congress, and Thomas Wilson as a justice of the supreme court, and these sagacious statesmen deemed it unwise to take everything in sight for Winona. The Democrats of the district, however, nominated Waterman,

although he was a Republican, but at the election in November Barber received the greater number of votes, and served out his term of seven years with credit to himself and with satisfaction to the district.

The next convention for the third judicial district was held September 27, 1871, at Winona. Norton had been, in the meantime, elected United States senator and had served from March 4, 1865, until his death July 13, 1870; Wilson had resigned the office of chief justice July 14, 1869; and Windom had been chosen United States senator for the six-year term beginning March 4, 1871. Wabasha, Winona, and Houston counties now for the sake of convenience preferred Waterman for judge and he was nominated by the vote of these three counties. He was elected without opposition, and on January 1, 1872, Judge Barber's judicial career came to an end.

Soon afterwards Judge Barber removed from Rochester to Winona and opened a law office for general practice. But business did not come to him in satisfactory volume. A jurist retired from the bench rarely returns to the conflict and struggles of the bar with that confident air and with that aggressive, partisan vigor usually exhibited by the practitioner and so satisfying to the militant and often revengeful feeling of his client. In his years of service on the bench he acquires a calm, meditative, and judicial attitude. He does not fight his adversary with that desperate valor of the soldier who has burned his ships behind him, and he usually fails as a general practitioner. He must secure permanent employment as general counsel for some railroad or other large corporation, or be driven out of remunerative practice by younger and more aggressive members of the profession. He learns too late the wisdom of the maxim that a lawyer should first acquire a fortune by industry, inheritance, or marriage before accepting judicial honors.

Judge Barber was born and grew to manhood on a farm in Steuben County, New York, in the midst of a lofty and broken country, whose waters in part flow southward to Dela-

ware Bay and in part northward to Lake Ontario and the Gulf of St. Lawrence. The hills lift their heads up to the higher currents of the sky, and the decaying mold, which trickles down their abruptly sloping sides, fertilizes the green valleys in between. Fortune was to the boy a stern and rugged nurse. Clad in homespun, he toiled early and late, in heat and cold. But dwellers amid such broken and lofty scenes acquire a love of home, a patriotic devotion to their firesides and green fields unknown to those who inhabit the dull, unchanging plains. Barber felt that love of his rugged home in all its magnetic force. He left Steuben the third time before he grew content to live elsewhere.

When his law business failed to be remunerative, he sold his level prairie farm six miles northeast of Rochester and purchased some acres along the lofty bluffs eleven miles southeast of Winona. There among the towering hills he felt again that unspeakable satisfaction of his boyhood days, when in the old red schoolhouse he recited Sir Walter Scott's tale of that McGregor who would give his highland roof to the flames and his flesh to the eagles before he'd bow the head or bend the knee to the lowland lords of the plain below. He retained his residence and law office in Winona, but in later years the office was nearly always locked, and in 1908 he closed it and returned the key to his lessor.

His life was pure, his purpose noble, his conduct worthy of admiration. The Olmsted County bar in a body followed his remains to their last resting place in Oakwood Cemetery in Rochester, indulging a reasonable expectation that he, once their temporal judge, would find favor with the Judge Eternal.

CHARLES C. WILLSON

ROCHESTER, MINNESOTA